

Supplemental Comments of Noticing Distributors

May 25, 2006

The Noticing Distributors submit these supplemental comments for inclusion in the record of the May 18, 2006 TVA Board hearing. The Noticing Distributors greatly appreciate the opportunity to have participated in the May 18 hearing and to have submitted their Joint Statement and written testimony at that time. These supplemental comments address questions or issues raised during the hearing.

➔ Why should TVA do anything? If there were no “Kentucky situation,” would it still be in TVA’s interest to approve the Joint TVPPA Plan?

The driver for change is not the fact that a handful of distributors have given notice of termination, but the decision that TVA already made in 1997, when it entered into the “5 + 5” contract amendment with most of its distributors. That contract amendment gave distributors the right to terminate their contracts with TVA and purchase power supply from other providers. TVA signed those contract amendments five years *after* Congress had enacted the anti-cherry-picking provision in 1992, so there can be no doubt that TVA was well aware of the rights it was giving up in exchange for other provisions beneficial to TVA, such as the assurance that no contract termination would be effective prior to 2007 and the opportunity to collect higher rates during that period to reduce TVA’s debt.

By approving the Joint TVPPA Plan, TVA will be honoring its contracts, while at the same time (1) providing strong incentives for distributors to choose to stay with TVA, and (2) foreclosing any possibility of an uncontrolled, sudden exodus of its customers. If the TVA Board does not approve the Plan, it will be inviting litigation and legislative action that could leave TVA without the important protections that are included in the Plan for the benefit of TVA and all of its customers.

For a summary of additional reasons why the Joint TVPPA Plan is a positive opportunity for TVA, regardless of the “Kentucky situation,” we invite the Board’s attention to pages 4 through 8 of the Joint Statement of Noticing Distributors. Among those reasons are the following:

- Congress has already enacted the new Section 211A of the Federal Power Act, which provides transmission access rights for all distributors.
- Several of the Noticing Distributors are not located inside the TVA “fence,” and therefore have the same transmission access rights as all other utilities that are not subject to the “anti-cherry-picking” provision.
- The “5 + 5” contracts are subject to being enforced in federal court.
- Inaction by the TVA Board will create the impetus for additional federal legislation to address the issues in what may be a less tailored fashion.

- The Plan leaves untouched TVA's discretion to set rates for the sale of power and thus, in conjunction with its limitations on departures of customers, assures TVA's continuing financial strength.

In short, it is simply too late for TVA to try to "turn back the clock" and seek to re-establish monopoly control over its grid. Even if some members of the new TVA Board may wish that the "5 + 5" contracts had not been signed, or that the President had not signed the Energy Policy Act of 2005 adding section 211A to the Federal Power Act, the reality remains. More importantly, from a positive perspective the Joint TVPPA Plan offers TVA the opportunity to make attractive options (including long-term contracts) available to distributors that will encourage them to *want* to keep TVA as their supplier, rather than having to *force* them to stay. Voluntary, long-term contractual arrangements offer a far superior foundation for conducting business in this capital intensive industry than defensive efforts to prevent one's customers from exercising their existing rights. Surely, the Joint TVPPA Plan is more in keeping with TVA's heritage and mission of providing opportunities for the betterment of the Tennessee Valley than seeking to become the 800 pound gorilla that tries to maintain control with an iron fist. During the May 18 hearing, TVA Board members correctly noted the importance of protecting the interests of distributors who choose to remain with TVA. The wholehearted support for the Plan expressed by the panel representing distributors who expect to stay with TVA demonstrates that approval of the Plan will meet that objective and keep TVA strong.

➔ If TVA offers transmission access as contemplated in the Joint TVPPA Plan, must TVA nevertheless remain the "supplier of last resort" to those distributors who terminate their power supply contracts with TVA?

No. Distributors who terminate their power supply contracts with TVA will be responsible for establishing arrangements for all elements of power supply. Those arrangements will include suitable provisions for back-up power from alternate wholesale suppliers in the event that there is an unplanned outage or interruption of supply from the distributor's regular power supply resources. Unless TVA elects to contract to provide such back-up power (which it might, if the terms and prices were attractive to TVA), TVA would no longer be obligated to sell or provide power supply to the distributor. Thus, TVA would not be the "supplier of last resort," as that term is typically used in the context of retail wheeling structures, where in some states, certain utilities are required to sell power to specified customers in the event that no one else is willing or able to do so.

On the transmission side (as contrasted with the power supply side), if the distributor is purchasing firm transmission service from TVA and either fails to schedule the power necessary to serve its load or fails to deliver to TVA the power that is scheduled, TVA, like any other transmission provider, will be fully protected and compensated under its Transmission Service Guidelines. Under those Guidelines, the distributor would be subject to an Energy Imbalance Service Obligation. Unless that obligation is satisfied by the distributor in some other manner, it would be required, among other things, to purchase Energy Imbalance Service from TVA at fully compensatory rates, just like any other utility that purchases transmission service from TVA. (See Schedule 4 of the TVA Transmission Service Guidelines, Original Sheet Nos. 63-64.)

➔ **Should East Kentucky Power Cooperative's interconnection request be viewed as being similar to its earlier transmission service request that TVA rejected?**

No. The most obvious difference is that when East Kentucky Power Cooperative requested that TVA provide transmission service, its plans did not include the construction of approximately 97 miles of new transmission lines. After TVA refused to provide transmission service (thereby forgoing the opportunity to benefit from a continuing revenue stream for providing the service), EKPC was required to spend millions of dollars to provide the new facilities that will enable it to reliably deliver power to Warren Rural Electric Cooperative Corporation. As Warren RECC's President and CEO, Gerald Hayes, testified at the May 18 TVA Board hearing, those new facilities, coupled with the reliability interconnection agreements with TVA, will also provide south central Kentucky with enhanced reliability at the most economical cost.

➔ **Will the retention of existing interconnections and the addition of new interconnections between TVA and its distributors and neighboring utilities enhance the reliability of the TVA grid?**

Yes. Interconnections between electric systems generally offer enhanced reliability and other benefits for all affected utilities. Kentucky Public Service Commission Chairman, Mark David Goss, testified that enhanced interconnections can provide looped circuits and alternate transmission paths that both increase reliability and can allow the sharing of resource margins. He noted that the summer peak load characteristic of the TVA system and the winter peak of East Kentucky Power Cooperative create a potential opportunity for mutually beneficial economical power exchanges, if sufficient transfer capability exists. As stated above, Mr. Hayes similarly testified that the new interconnections between TVA and East Kentucky Power Cooperative will provide south central Kentucky with enhanced reliability. In the cases of Princeton EPB and Paducah Power System, Mr. Humphries testified that they are considering installation of peaking generation on their systems, which could be made available to TVA during emergencies (as well as at other times) and, together with potential new interconnections with neighboring systems, would provide increased reliability for TVA's grid. Interconnections are a "two-way street," offering reliability benefits to both TVA and its neighbors.